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See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

DEC 14 2011

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

STATE OF ARIZONA, ex rel. THE
DEPARTMENT OF ECONOMIC
SECURITY,

Petitioner/Appellee,

v.

ALEJANDRO RODRIGUEZ,

Respondent/Appellant.

) 2 CA-CV 2011-0046
) DEPARTMENT A
)
)

MEMORANDUM DECISION

) Not for Publication
) Rule 28, Rules of Civil
) Appellate Procedure
)
)
)

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. SP20101314

Honorable Deborah Ward, Judge Pro Tempore

AFFIRMED

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H O W A R D, Chief Judge.

¶1 In this paternity and child support enforcement action, appellant Alejandro Rodriguez appeals from the trial court's denial of his motion for relief from the default

judgment entered in favor of the state, claiming the court lacked subject matter jurisdiction over the action. Because the court had subject matter jurisdiction, we affirm.

Factual and Procedural Background

¶2 We accept the trial court's factual findings unless they are clearly erroneous.¹ *Engel v. Landman*, 221 Ariz. 504, ¶ 21, 212 P.3d 842, 848 (App. 2009). In 2005, the state sued Rodriguez seeking to establish paternity and obtain support for a child born to Liliana Gastelum in Arizona, in 2003. Rodriguez defaulted, and a paternity and child support judgment was entered in 2006. In 2010, Rodriguez moved to modify the child support award. Rodriguez then moved for relief from the judgment, claiming, among other arguments, that the judgment was void because the child and mother resided in Mexico and thus were not residents of Santa Cruz County at the time of the original petition.

¶3 The trial court denied Rodriguez's motion for relief from the judgment, finding that, based on the record, the child had been a resident of Arizona at the time the petition was filed and that Rodriguez continued to be a resident of Arizona. The court modified Rodriguez's on-going, child-support payments to \$0. This appeal followed.

Jurisdiction

¶4 Rodriguez argues the trial court erred by denying his motion for relief because the original judgment was void for lack of subject matter jurisdiction based on

¹Rodriguez has failed to provide proper citations to the record in his statement of facts and therefore we disregard it. *See Ariz. Dep't of Econ. Sec. v. Redlon*, 215 Ariz. 13, ¶ 2, 156 P.3d 430, 432 (App. 2007).

A.R.S. § 25-502(B). He bases his argument on evidence that Gastelum and the child were not residents of Santa Cruz County when the initial petition was filed. We review the denial of a motion for relief from a void judgment de novo. *Ezell v. Quon*, 224 Ariz. 532, ¶ 15, 233 P.3d 645, 649 (App. 2010) (“When a judgment is void due to lack of jurisdiction, ‘the court has no discretion, but must vacate the judgment.’”), *quoting Springfield Credit Union v. Johnson*, 123 Ariz. 319, 323 n.5, 599 P.2d 772, 776 n.5 (1979); *see State ex rel. Dep’t of Econ. Sec. v. Tazioli*, 226 Ariz. 293, ¶ 7, 246 P.3d 944, 945 (App. 2011) (jurisdiction and interpretation of statute questions of law reviewed de novo).

¶5 If the trial court did not have jurisdiction over the person, subject matter or particular judgment, then the judgment is void. *Master Fin., Inc. v. Woodburn*, 208 Ariz. 70, ¶ 19, 90 P.3d 1236, 1240 (App. 2004). And a party seeking relief from such a judgment is not required to “show that their failure to file a timely answer was excusable, that they acted promptly in seeking relief from the default judgment, or that they had a meritorious defense.” *Id.* Rule 85(C)(1)(d), Ariz. R. Fam. Law P., allows the trial court to relieve a party from a void judgment.

¶6 The term “jurisdiction” has often been inaccurately applied on appeal to argue legal error in a judgment. *See, e.g., Vicari v. Lake Havasu City*, 222 Ariz. 218, ¶ 12, 213 P.3d 367, 370-71 (App. 2009) (finding jurisdictional argument “refer[red] not to the power of the court . . . but to the correctness of the court’s decision); *see State ex rel. Dandoy v. City of Phx.*, 133 Ariz. 334, 339, 651 P.2d 862, 867 (App. 1982) (recognizing “considerable confusion in this area of the law based upon the often

imprecise use by the courts of the words ‘void’ and ‘jurisdiction’, generally occurring on direct appeal in situations involving mere legal error rather than true lack of jurisdiction”). Subject matter jurisdiction refers to “the power to hear and determine cases of the general class to which the particular proceedings belong.” *In re Marriage of Dorman*, 198 Ariz. 298, ¶ 7, 9 P.3d 329, 332 (App. 2000), *quoting Estes v. Superior Court*, 137 Ariz. 515, 517, 672 P.2d 180, 182 (1983). Here, we conclude Rodriguez has conflated subject matter jurisdiction and venue.

¶7 Section 25-502 is titled “Jurisdiction, venue and procedure” and states in relevant part:

A. The superior court has original jurisdiction in proceedings brought by the department, its agents, a person having physical custody of a child or a party to the case to establish, enforce or modify the duties of support as prescribed in this chapter. All such proceedings are civil actions except as provided in [A.R.S.] § 25-511. Proceedings to enforce the duties of support as prescribed in this chapter may be originated in the county of residence of the respondent or the petitioner or of the child or children who are the subject of the action.

B. A proceeding to establish support must originate in the county where the child resides or, if the child resides out of state, the county of this state where the party filing the petition to establish support resides, if either of the following applies:

1. An action does not exist under this title.
2. Paternity was established without a court order pursuant to [A.R.S.] § 36-334.

¶8 Under A.R.S. § 25-501(A) “every person has the duty to provide all reasonable support for that person’s natural and adopted minor, unemancipated children,

regardless of the presence or residence of the child in this state.” Thus, § 25-502(A) grants the superior court jurisdiction to hear and determine support actions. Rodriguez does not claim that the department did not bring the action to establish child support, nor has he denied that he was a resident of Arizona or that the child was born in Arizona. Rather, as noted above, he relies on § 25-502(B) and maintains that its requirements are “jurisdictional.” That subsection, however, does not address the subject matter jurisdiction of the court, but dictates the proper venue for a support proceeding if no prior order exists.

¶9 Rodriguez emphasizes that § 25-502(B) uses the mandatory term “must.” But the fact that venue is mandatory does not convert it to an issue of subject matter jurisdiction. The general venue statute also uses mandatory terms, but nevertheless controls venue, not jurisdiction. *See* A.R.S. § 12-401 (providing that “[n]o person shall be sued out of the county in which such person resides,” action against personal representative “shall be brought in the county in which the estate is being administered,” “actions concerning real property, shall be brought in the county in which the real property . . . is located”). Indeed, A.R.S. § 12-404(A) states a court has jurisdiction to hear and determine a matter brought in the incorrect venue if venue is not properly transferred. *See also Mohave Cnty. v. James R. Brathovde Family Trust*, 187 Ariz. 318, 322, 928 P.2d 1247, 1251 (App. 1996). Thus, even if venue or the transfer of venue is mandatory, venue is not jurisdictional. *Id.* at 321-22, 928 P.2d at 1250-51 (statute mandating venue for tax lien foreclosure dealt only with venue, not jurisdiction of superior court).

¶10 Similarly, in the paternity action context, A.R.S. § 25-801 grants the superior court jurisdiction to hear such actions, and A.R.S. § 25-802 provides for venue. Section 25-802 further states: “The fact that the petitioner parent or child or both are not, or never have been, residents of Arizona does not bar the proceeding.”

¶11 The legislature has set out the policy of the state that the presence and residence of the child are not determinative of the parent’s support obligation. *See* § 25-501(A); *see also State ex rel. Dep’t of Econ. Sec. v. Demetz*, 212 Ariz. 287, ¶ 10, 130 P.3d 986, 989 (App. 2006). It has also granted the superior court subject matter jurisdiction without limitation in § 25-502(A). We cannot interpret § 25-502(B) as implicitly limiting that grant of jurisdiction in contravention of the public policy established in §§ 25-501, 25-801, and 25-802.

¶12 In his reply brief, Rodriguez claims the state waived its position because the trial court rejected it and the state did not object to the findings or appeal from them. Even assuming Rodriguez was correct that the trial court rejected the state’s position, we will affirm the trial court if it is correct for any reason. *In re Marriage of Gibbs*, 227 Ariz. 403, ¶ 16, 258 P.3d 221, 227 (App. 2011). And the state was not required to file a cross-appeal unless it sought to expand its rights under the judgment. *See CNL Hotels & Resorts, Inc. v. Maricopa Cnty.*, 226 Ariz. 155, ¶ 37, 244 P.3d 592, 600 (App. 2010). Therefore, the trial court correctly denied Rodriguez’s motion for relief, because it had subject matter jurisdiction over the action.

Exclusion of Evidence

¶13 Rodriguez further argues the trial court erred by refusing to allow him to present evidence and legal argument concerning its lack of subject matter jurisdiction. We review the court's exclusion of evidence for a clear abuse of discretion and resulting prejudice. *Lashonda M. v. Ariz. Dep't of Econ. Sec.*, 210 Ariz. 77, ¶ 19, 107 P.3d 923, 928-29 (App. 2005).

¶14 Rodriguez claims he should have been allowed to present evidence such as unanswered requests for admissions he had made to the state and Gastelum, an affidavit of a process server, responses to non-uniform interrogatories he had submitted, Gastelum's college records, and a sworn statement, all of which related to his claim the trial court lacked subject matter jurisdiction. But Rodriguez bases his jurisdiction argument solely on § 25-502, which we conclude pertains to venue and not jurisdiction. So even if the trial court had admitted the offered evidence, Rodriguez would have failed to establish a lack of subject matter jurisdiction. Accordingly, he suffered no prejudice from the trial court's rejection of the evidence. *See Lashonda M.*, 210 Ariz. 77, ¶ 19, 107 P.3d at 928-29.

¶15 Rodriguez also makes a due process claim. But, as the state notes, this claim was not raised below. Therefore, we will not consider it here. *See A Tumbling-T Ranches v. Flood Control Dist. of Maricopa Cnty.*, 222 Ariz. 515, ¶¶ 37-38, 217 P.3d 1220, 1235 (App. 2009).

¶16 Rodriguez further complains that the trial court erred by finding that the child was a resident of Arizona at the time the petition was filed. But we have

determined above that he has failed to establish any statutory jurisdictional requirement that the child be a resident of Santa Cruz County for paternity or child support purposes. Therefore any error was harmless. *See* Ariz. R. Fam. Law P. 86.

Conclusion

¶17 For the foregoing reasons, we affirm the trial court's judgment.

/s/ Joseph W. Howard

JOSEPH W. HOWARD, Chief Judge

CONCURRING:

/s/ Peter J. Eckerstrom

PETER J. ECKERSTROM, Presiding Judge

/s/ Garye L. Vásquez

GARYE L. VÁSQUEZ, Judge